

REMARKS

Claims 1-3, 14, and 16-31 are pending in the application. Claims 1, 2, 3, and 9 are in independent form. Claims 4-8, 10-13, and 15 have been canceled without prejudice.

Applicants wish to express their appreciation for the courtesies extended Applicant's representative, Amy E. Rinaldo, during a telephonic interview conducted in August 2003.

Claims 1, 2, and 4-12 stand objected to because of informalities. The informalities have been corrected as requested in the outstanding Office Action and reconsideration of the rejection is respectfully requested.

Claims 1, 3, 9, 11, 13, and 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the Small patent. Reconsideration of the rejection under 35 U.S.C. § 102(b), as anticipated by the Small patent, as applied to the claims, is respectfully requested. Anticipation has always been held to require absolute identity in structure between the claimed structure and a structure disclosed in a single reference.

In Hybritech Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986) it was stated: "For prior art to anticipate under §102 it has to meet every element of the claimed invention."

In Richardson v. Suzuki Motor Co., Ltd., 868 F.2d 1226, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989) it was stated: "Every element of the claimed invention must be literally present, arranged as in the claim."

The Office Action states that the Small patent discloses an assembly having the structure claimed in the presently pending independent claims including a wear member 13, support structure 11, first passage 20, second passage 18, pin retainer 25, and pin means 22 that extends through the first passage and into the second passage for

locking the wear member to the support structure and bearing substantially all of the wear member removal compressive forces during the use of the wear member as shown in Figures 1, 3, and 5. However, when read more specifically, the Small patent discloses a system in which the pin retainer must be fabricated from a malleable metal.

That is, it must be "capable of being extended or shaped by beating with a hammer or the pressure of rollers." The pin retainer must then be physically deformed by hammering during the installation before the pin retainer can retain the pin. In contradistinction, the presently pending independent claims claim a pin retainer that experiences no deformation during installation. Instead, it is preferred that the pin retainer be made of resilient material but compresses elastically during use when the pin shifts into a load bearing position. The resilient pin retainer can experience elastic deformation but not plastic deformation so that the pin can later be easily unscrewed for tooth replacement. Therefore, the resilient pin retainer of the presently pending independent claims is necessarily formed of a non-malleable material because a malleable material would not provide the required elastic deformation. Since the Small patent does not disclose the resilient pin retainer included in the assembly of the presently pending independent claims, the claims are patentable over the Small patent and reconsideration of the rejection is respectfully requested.

The remaining dependent claims not specifically discussed herein are ultimately dependent upon at least one of the independent claims discussed above. References as applied against these dependent claims do not make up for the deficiencies of those references as discussed above. The prior art references do not disclose the characterizing features of the independent claims discussed above. Hence, it is respectfully submitted that all of the pending claims are patentable over the prior art.

In view of the present amendment and foregoing remarks, reconsideration of the rejections and advancement of the case to issue are respectfully requested.

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The Commissioner is authorized to charge any fee or credit any overpayment in connection with this communication to our Deposit Account No. 11-1449.

Respectfully submitted,

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